

49 CFR Part 175

[Docket No. HM-166J; Notice No. 81-5]

Carriage of Tear Gas Devices Aboard Aircraft**AGENCY:** Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.**ACTION:** Withdrawal of proposed rulemaking.

SUMMARY: MTB is withdrawing the Notice of Proposed Rulemaking (Docket HM-166J, Notice No. 81-5) which was published August 10, 1981 (48 FR 40540). In Notice No. 81-5, it was proposed to relax the Hazardous Materials Regulations (HMR) to permit passengers and crewmembers to carry, in checked baggage aboard aircraft, small personal protection devices containing tear gases or pepper extracts. Written comments submitted in response to Notice No. 81-5 indicate the possibility of safety-related problems and operational problems for air carriers, if the proposed rulemaking were promulgated.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: In Notice No. 81-5, MTB proposed to provide regulatory relief to the traveling public with regard to the carriage aboard aircraft of personal protection devices containing tear gases. The proposed rule addressed tear gas devices which are subject to the HMR as irritating materials and also devices containing pepper extracts which, although they do not meet the definitions in 49 CFR 173.380 for irritating materials, are subject to the HMR when charged with compressed gases. The proposal was based on problems encountered at airport security screening points where many tear gas devices are discovered being carried by passengers who, in many instances, are not aware that the HMR prohibit the transportation of tear gases, including devices, on passenger-carrying aircraft. The proposed rule would permit a traveler to carry one device, capacity not to exceed two fluid ounces, in his checked baggage if the device were packaged so as to prevent accidental activation. The means by which the device would be packaged was not specified. Carriage in checked baggage was specified in order to preclude commercial shipments and to preclude carriage by a traveler on his person, or in carry-on baggage, in the passenger compartment of an aircraft.

Twelve commenters representing businesses, associations, and individuals responded to the request for comments in Notice No. 81-5. Seven of these commenters supported the rulemaking as proposed, indicating a need for the rulemaking but offering no substantive comment. One commenter indicated that carriage of tear gas devices should be limited to carriage in baggage compartments which are inaccessible to passengers during flight and where, in the event of an accidental release, irritating materials would not affect crewmembers. One commenter suggested that carriage of the devices should be limited to "sealed" cargo compartments because none of the tear gas devices are leak free. One manufacturer of the devices indicates that deficient components can result in leakage. This commenter opposed the proposed rulemaking claiming that poor handling, improper packaging by a passenger, use of soft luggage, or deficient device components could result in a significant mid-flight release with uncertain results. Both the Air Transport Association of America (ATA) and the International Air Transport Association (IATA) criticized the proposal both because of the safety issue and because of operational problems which the proposal would pose for air carriers. The substance of these comments are reprinted as follows.

ATA:

The Air Transport Association's Restricted Articles Board (RAB), a group of U.S. air carrier representatives from the fields of engineering, chemistry, cargo services, training and safety, take this opportunity to respond to DOT-MTB, R&SPA Notice of Proposed Rulemaking re HM-166J—Carriage of Tear Gas Devices Aboard Aircraft, contained in the Federal Register, Vol. 46, No. 153, dated August 10, 1981. (FR 40540-40541).

The majority of respondents initially suggest that the carriage of any irritant in a passenger's baggage is certainly not recommended. Obviously, it is difficult to determine what a passenger places in "checked" baggage, even though through various means passengers are "warned" against the carriage of any form of hazardous materials in any baggage or on their person.

One member responded totally in opposition to such a proposed relaxation in regulations, which in their opinion, appears to be created only due to the fact that the present regulatory requirement is practically unenforceable.

Another member posed the question, "Does such an amendment to the regulations by its permissiveness create a problem in the future; that is, would this action inadvertently recognize future chemical compositions in such devices which could present a far greater hazard than (sic.) that which is presently indicated?" In this connection, it was felt that most such devices, present or future, would not carry much more advice than a "trade name."

An air carrier potential operational problem, which the new relaxation could create is suggested in the following scenario:

Passengers departing on flights at any given airport will check their baggage other than "carry on" items prior to the "security inspection" points. If a "protection device" is to be discovered, it will be at the time of this inspection. Upon being advised that such device can only be carried in "checked" baggage, rather than forfeit the device, most passengers would request the air carrier to retrieve their baggage so they can stow the device in "checked" baggage.

A number of such individual requests on any given flight could definitely produce additional logistics problems, and add another burden to the workload of the departure operation.

It also appears that these substances do not dissipate as would vapor from carbon dioxide solid, if a release were contained in a cargo bin. Thus, upon discovery of such a condition when unloading an aircraft, a "force air flow procedure" to evacuate the vapor residue would have to be instituted, requiring at least ten minutes. This now adds an additional burden in the workload of an unloading operation.

We would also like to provide the following additional points for your consideration and investigation:

- Exposure to certain of these compounds can produce violent skin reactions to humans;
- Exposure of certain animals to such as CS and mace will cause such violent reaction that animals will scratch and tear at themselves until they bleed to death. (Air carriers do not have the possibility of separating animals from all baggage);
- A great percentage of manufactured luggage today is "soft" luggage, which indents and reshapes easily;
- Depending on the manufacturer of these devices, locking mechanisms are not necessarily "positive" locking devices;
- Depending on the manufacturer of these devices, certain of the pressure vessels themselves will evidently leak at sea level on a hot day.

In conclusion, though not preferring the allowance of these substances on aircraft at all, the members do feel that the "lesser of evils" is the containment (sic.) of these devices in baggage in cargo bins rather than in cabin areas.

IATA:

The International Air Transport Association (IATA) is the trade association of 112 Member airlines worldwide. On behalf of its Members, IATA wishes to make the following comments on the DOT-MTB, R&SPA Notice of Proposed Rulemaking, HM-166J—Carriage of Tear Gas Devices Aboard Aircraft. IATA fully supports the comments which have been submitted by the Air Transport Association of America, and hereby submits the following additional comments.

The proposal to allow tear gas personal protection devices in passengers (sic.) checked baggage is absolutely unacceptable for the following reasons:

1. The IATA Restricted Articles Regulations are presently accepted in many countries as the basic rules concerning the transport of dangerous goods. In the Regulations, tear gas devices are "not

acceptable" on passenger aircraft. Even if the U.S. regulations concerning carriage of tear gas devices are relaxed, passengers participating in international travel will encounter difficulties when boarding a flight from the U.S. to a country where such devices are still not allowed.

For example, in the United Kingdom the carriage of any type of tear gas device on passenger aircraft, either as carry-on or checked baggage, is prohibited by law (Ref. Article 41 of UK Air Navigation Order 1980). Also, possession of such devices is illegal in the UK under Section 5 of the 1968 Firearms Act, where they are defined as "munition of war/prohibited weapon". Also, in Canada under Section 88 of the Criminal Code, Prohibited Weapons Order Number 1, tear gas devices are considered to be weapons and persons are therefore prohibited from possessing them. Thus, if U.S. DOT regulations permitted the carriage of tear gas security devices by passengers in checked baggage, it would cause serious problems for passengers with such devices, travelling to the UK and Canada, who would probably not be aware of the laws of those countries.

2. The airlines have no practical means to control observance of the proposed limitations on quantity and required packaging of the devices in passengers' checked baggage. Some personal protection devices have a higher concentration of tear gas substances than others, and it would be difficult for passengers or airline staff to determine the amount, as many of them *only* have a brand name, and not a detailed description of the content. The ICAO Technical Instructions on dangerous goods which will come into effect on 1st January 1983, contain stringent packaging requirements for tear gas devices, to prevent accidental activation, and containment of the gas in case of accidental activation. Yet the proposed rule simply requires that "The device is packaged in a manner which will prevent its accidental activation". Who will determine this, the passenger or the airline? In most cases, the airline will not even know that such a device is in checked baggage. We doubt that any passenger would know what packaging is required to "prevent its accidental activation".

3. If the U.S. DOT were to permit the carriage of tear gas devices, it would be difficult to inform passengers of the limitation on capacity of the container and packaging requirements. There are already so many U.S. Government notices required in passengers' tickets, and at airports, that the majority of passengers do not read them. Even if the DOT were to require a notice regarding the tear gas devices to be posted at airports, at that stage it is too late for the passenger to do anything about it, even if he does have such a device in his baggage. Most passengers will simply keep quiet, suspecting that the airline will confiscate the device because it does not meet requirements.

Most tear gas security devices are carried by passengers in their hand baggage. If they are discovered by security search personnel, it is normally too late for the passenger to get the device into his checked baggage, which has already been checked. It is understood that hundreds of such devices are discovered daily by security search personnel at each

large U.S. airport. Therefore, the IATA Members would find it unacceptable if the DOT regulations were to permit the devices in checked baggage, as it would be physically impossible to get all of them into the checked baggage of the passengers.

For these reasons, the Members of IATA are opposed to the proposed amendments to the Hazardous Materials Regulations.

In response to the above comments, MTB offers the following. First, checked baggage is not normally accessible to passengers on commercial aircraft. It is normally stowed in inaccessible cargo compartments which have little or no interchange of air with passenger cabins. In the event of release of an irritating material from a device of such size and packaged in the manner prescribed in the proposed rule, MTB believes that there would be little or no hazard posed to persons, animals or property. However, in the absence of historical shipping data or other evidence, MTB only has conjecture to counter allegations of possibly significant hazards. Second, MTB agrees that the proposed rule could pose operational problems for air carriers, at least for that period of time during which the traveling public becomes familiar with the new provisions. Information is not available to determine either the cost of this operational burden, in terms of delays and deteriorated customer relations, or the relative value of the benefits which would accrue to air travelers.

The President's Executive Order on Federal Regulation, E.O. 12291, requires, among other things, that new regulations not be established unless there is "adequate information concerning the need for and consequences of" the regulation, and unless "the potential benefits to society from the regulation outweigh the potential costs to society." MTB does not believe there is adequate information available concerning the consequences of the proposed rule nor can MTB establish that societal benefits arising from the proposed regulation would outweigh societal costs.

Based on the comments received, the conclusions reached and the recommendation of the FAA, the Notice of Proposed Rulemaking, Notice No. 81-5, is withdrawn and Docket No. HM-186J is hereby terminated without further action.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, App. A to Part 1 and paragraph (a)(4) of App. A to Part 106)

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